



During the adjustment of the claim BED sold the property to Plaintiff 326 Colonial Apartment Complex, LLC (“Colonial”) without informing Seneca. Although Colonial was not an insured under the Seneca policy, it nevertheless requested proceeds allegedly necessary to repair damage from the fire. Seneca denied its claim and Plaintiffs later filed this action in Dallas County state court.

On February 24, 2017, Seneca timely removed the case to this Court. [Doc. 1] After removal the Parties conferred as required by this Court’s Status Report Order. [Doc. 6]. At no time during that conference or in drafting the Joint Status Report did either Plaintiff ever challenge removal. Nevertheless, over twelve weeks after removal, Plaintiffs filed their Motion to Remand. [Doc. 20].

## **II. STANDARD OF REVIEW**

The removal statute requires that a motion to remand a case for “procedural” defects in removal, as opposed to jurisdictional defects, must be made within 30 days after the removal notice is filed in federal court. 28 U.S.C. § 1447(c); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 117 (1996); *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 566 (5th Cir.1995). The Fifth Circuit has ruled that a procedural defect is “any defect that does not go to the question of whether the case originally could have been brought in federal district court.” *Baris v. Sulpicio Lines Inc.*, 932 F.2d 1540, 1544 (5th Cir.1991). A plaintiff who does not object to a procedural error in the removal within 30 days waives the objection to the error. *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 457 (5th Cir.1998). “This thirty-day deadline is strictly enforced in the Fifth Circuit.” *Pruetz v. Standard Guar. Ins. Co.*, H–10–4198, 2011 WL 867044 (S.D. Tex. Mar. 10, 2011).

### III. ANALYSIS

Plaintiffs' Motion to Remand in this case is untimely and should be denied. Plaintiffs do not dispute that the Court has jurisdiction over the case because of the diversity of the parties. The only basis for remand would be based on the Service of Suit clause, but that basis is solely a procedural defect that must be raised within thirty days of removal. Plaintiffs did not raise such an objection at that time, and instead, waited almost twelve weeks to assert the current motion.

The Southern District of Texas has already reviewed and rejected virtually identical arguments. In *Pruetz v. Standard Guaranty Ins. Co.*, an insured argued that an insurer's removal to federal court was improper due to the Service of Suit clause. 2011 WL 867044 at \*1. Nevertheless, the Court denied the Motion because the Fifth Circuit has been clear that such circumstances are procedural defects that must be timely raised. *Id.* Because the Plaintiff had not done so, remand was improper. These facts are virtually identical. Accordingly, the Court should deny Plaintiffs' Motion to Remand.

### IV. CONCLUSION

For the reasons stated above, Defendant Seneca Specialty Insurance Company requests that this Court deny Plaintiffs' Motion to Remand.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery

JAMES N. ISBELL

Attorney-in-Charge

Bar No. 10431900

[jisbell@thompsoncoe.com](mailto:jisbell@thompsoncoe.com)

CHRISTOPHER H. AVERY

Bar No. 24069321

[cavery@thompsoncoe.com](mailto:cavery@thompsoncoe.com)

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8210  
Facsimile: (713) 403-8299

**LOCAL COUNSEL:**

LINDSEY SHINE LAWRENCE  
State Bar No. 24053681  
THOMPSON, COE, COUSINS & IRONS, L.L.P.  
700 N. Pearl Street, 25th Floor  
Dallas, Texas 75201  
Telephone: (214) 871-8200  
Facsimile: (214) 871-8209  
Email: tbrown@thompsoncoe.com

**ATTORNEYS FOR  
SENECA INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served via the Court's electronic notification system on the 15th day of May to the following counsel of record:

MATTHEW R. PEARSON  
JONATHAN C. LIENBY  
GRAVELY & PEARSON, LLP  
425 Soledad, Suite 600  
San Antonio, Texas 78205  
mpearson@gplawfirm.com  
jlienby@gplawfirm.com

/s/Christopher H. Avery  
Christopher H. Avery